

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. 41185

ARIZONA PUBLIC SERVICE COMPANY & PACIFICORP

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY¹

Decided: December 23, 2003

By petition filed on December 16, 2003, Arizona Public Service Company and PacifiCorp (collectively, Arizona) ask the Board to issue a subpoena for the production of documents directed to Salt River Project Agricultural & Power District (Salt River). Salt River is a non-party whose coal traffic was grouped with that of Arizona in prior decisions for the development of revenues and costs under the Board's stand-alone-cost (SAC) methodology for resolving maximum rate complaints. The documents sought from Salt River (described in detail in the Appendix to Arizona's petition) relate to the sourcing and re-sourcing of coal moved, and projected to be moved, by Salt River to its Coronado generating station between 1994 and 2013, the 20-year SAC analysis period being considered in this docket. Arizona states that any information provided by Salt River will be shared with defendant The Burlington Northern and Santa Fe Railway Company (BNSF) but will be kept confidential by both parties pursuant to the protective order served in this proceeding on February 21, 2002, and modified on June 6, 2003 (the protective order). Arizona further states that it has consulted with Salt River's counsel concerning its desire to obtain the information and to keep it confidential under the protective order but that Salt River responded that it prefers to deal with this type of request through the subpoena process.

The subpoena requested by Arizona will be issued. Under 49 U.S.C. 721(c), the Board has the authority to subpoena the type of information sought from a third party like Salt River, as long as it is "related to a proceeding of the Board." In its decision served in this proceeding on May 12, 2002, the Board held that the parties must address the sourcing and re-sourcing of Salt River Project Coal, stating

¹ The original defendant in this proceeding, The Atchison, Topeka and Santa Fe Railway Company, has since merged with the Burlington Northern Railroad Company to form The Burlington Northern and Santa Fe Railway Company (BNSF). This proceeding has been recaptioned and the defendant will be referred to as BNSF.

(at 5): “We therefore need a more developed record on how Arizona and Salt River will re-source their coal needs once [the McKinley Mine] shuts down, what portion of that traffic could flow over the SARR [stand-alone railroad], and what revenues the SARR could reasonably expect to earn from that coal traffic.” Here, the information sought by Arizona is relevant, discoverable information related to this proceeding because it concerns grouped traffic that may be considered under the Board’s SAC methodology. Salt River’s compliance with the subpoena should not be burdensome because it requests specific, readily identifiable documents. As requested by Arizona, the protective order will govern any documents received from Salt River by Arizona or BNSF.

It is ordered:

1. Arizona’s petition for a subpoena is granted.
2. The protective order will govern any documents received from Salt River by Arizona or BNSF.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary